

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KYOO-BON CHO,

Defendant-Appellant.

UNPUBLISHED

April 21, 2005

No. 251737

Jackson Circuit Court

LC No. 03-000063-FH

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction on two counts of felony misconduct in office, MCL 750.505. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant first argues that his conviction for the common-law felony was improper where another statute made a provision for this misconduct. Interpretation and application of statutes is a question of law, reviewed de novo. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998).

MCL 750.505 provides:

Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 5 years or by a fine of not more than \$10,000, or both in the discretion of the court.

The statute has been applied to cases of misconduct in office. In *People v Contu*, 459 Mich 348; 589 NW2d 458 (1999), the Supreme Court found that the statute applied to deputy sheriffs who afforded work release prisoners favorable treatment in exchange for gifts. By its terms, the statute is inapplicable where the Legislature has made a provision for the punishment of an offense. *People v Davis*, 408 Mich 255, 275; 290 NW2d 366 (1980).

Defendant argues that as a probation officer his conduct was encompassed by MCL 791.222(3), and thus MCL 750.505 could not apply to his actions. MCL 791.222(3) provides:

A probation employee who receives compensation from public funds under this act, and receives any compensation, gift, or gratuity from a person under probation or from a person, partnership, association, or corporation for doing or refraining from doing an official act connected with his or her work as a probation employee, or connected with a proceeding pending or about to be instituted in the circuit court or recorder's court is guilty of a misdemeanor.

While some of defendant's actions could fall into this statute, his conduct constituted a more serious infraction. Defendant did not just receive compensation to refrain from performing an official act. He actively solicited bribes from his probationers by offering them favorable treatment. The trial court did not err in denying defendant's motion for directed verdict.

Defendant also asserts that the trial court erred in failing to apply the legislative sentencing guidelines, erroneously finding that there were no guidelines for this offense. While there were procedural errors in defendant's sentencing, the issue is now moot. Defendant has served his sentence, and it is impossible for this Court to order any relief. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder